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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 224 of 1986

in

SPECIAL CIVIL APPLICATION No 4824 of 1984

with

LETTERS PATENT APPEAL No 203 of 1994

in

SPECIAL CIVIL APPLICATION NO. 4825 OF 1984

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

and

MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements? No
2. To be referred to the Reporter or not? No :
3. Whether Their Lordships wish to see the fair copy : YES
of the judgement? No
4. Whether this case involves a substantial question : YES
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge? No :

UNION OF INDIA

Versus

M.S. SAIYED

Appearance:

1. LETTERS PATENT APPEAL No. 224 of 1986
MR JC SHETH for Appellants
MR SURESH M SHAH for Respondent No. 1
DELETED for Respondents No. 13 to 39
2. LETTERS PATENT APPEAL No 203 of 1994

MR JC SHETH for Appellants
MR SURESH M SHAH for Respondent No. 1
DELETED for Respondents No. 13 to 39

CORAM : MR.JUSTICE J.M.PANCHAL and
MR.JUSTICE A.L.DAVE

Date of decision: 27/10/1999

ORAL JUDGEMENT

(Per : Panchal,J.)

Both these appeals which are instituted under Clause 15 of the Letters Patent are directed against common judgment dated February 7, 1985, rendered by the learned Single Judge in Special Civil Applications No.4824/84 and 4825/84. The appeals involve common questions of fact and law. Therefore, we propose to dispose of these two appeals by this common judgment.

2. The respondents in both the appeals joined service of Railway Administration as Ticket Collectors on different dates. They were promoted as Leave Reserve Ticket Collectors on different dates. The service particulars of the respondents are shown in a statement which is annexed to the respective petition. In due course, the respondents were promoted as Passenger Guides on different dates as mentioned in the statement annexed to the respective petition and thereafter they were promoted to the post of Travelling Ticket Examiners. It may be mentioned that the post of Passenger Guide is a promotional post and carries higher duties as well as responsibilities than the post of Leave Reserve Ticket Collector. According to the respondents, they were required to be given one increment above stage at which they were drawing their pay in the post of Leave Reserve Ticket Collector, on their appointment to the post of Passenger Guide in view of the provisions of Rule 2018-B of the Indian Railway Establishment Code. The Railway Board issued a letter dated October 30, 1976 revising pay of Travelling Ticket Examiner, but disallowed the benefit of fixation of pay under Rule 2018-B of the Indian Railway Establishment Code. By the said letter, the respondents' pay in the post of Travelling Ticket Examiner was revised by disallowing the benefit of fixation of pay under Rule 2018-B of the Code. The respondents had received one increment on their promotion from the post of Leave Reserve Ticket Collector to the post of Passenger Guide and then another increment on

their promotion from the post of Passenger Guide to the post of Travelling Ticket Examiner, but benefit which the respondents had received under Rule 2018-B of the Code on their promotion from the post of Leave Reserve Ticket Collector to the post of Passenger Guide was withdrawn. Therefore, the respondents in Letters Patent Appeal No. 224/86, filed Special Civil Application No.4824/84 and prayed the Court to direct the authorities to restore to them the benefit of pay fixation under Rule 2018-B of the Indian Railway Establishment Code from due dates which was withdrawn pursuant to the Railway Board's letter dated October 30, 1976 and to pay to them the increments and difference in salary on that basis. It was also prayed to direct the authorities to fix their pay in the grade of Travelling Ticket Examiner on that basis from due dates and to grant them the consequential benefits of pay fixation, increments, difference in salary etc.

The respondents in Letters Patent Appeal No. 203/94, instituted Special Civil Application No. 4825/84 and claimed reliefs which were claimed by the original petitioners in Special Civil Application No. 4824/84.

3. After hearing the learned Counsel for the parties, the learned Single Judge directed the original respondents who are appellants in these two appeals to treat the original petitioners as having been promoted from the post of Ticket Collectors to the post of Passenger Guides and further promoted from the post of Passenger Guides to the post of Travelling Ticket Examiners. The learned Single Judge also made a declaration to the effect that the original petitioners would be entitled to a revised pay fixation and directed the respondents to work out and pay the revised pay within the time stipulated in the operative part of the judgment. The learned Single Judge has allowed both the petitions by common judgment dated February 7, 1985, giving rise to these appeals.

4. We have heard the learned Counsel for the parties. It may be stated that similar directions as are given in the impugned judgment, were earlier given by a learned Single Judge of this Court in Special Civil Application No. 1012/77 vide judgment dated August 3, 1982. The decision rendered by the learned Single Judge in Special Civil Application No. 1012/77 was challenged in Letters Patent Appeal No. 353/83, which was dismissed by judgment dated December 1, 1983. It is an admitted position that the judgment rendered by the Division Bench in Letters Patent Appeal No. 353/83 was never challenged by the present appellants before higher forum and was

accepted by them. The learned Single Judge while allowing the two petitions has mainly relied on the judgment rendered by the learned Single Judge in Special Civil Application No. 1012/77 as confirmed by Division Bench in Letters Patent Appeal No. 353/83. In our view, it cannot be said that any error was committed by the learned Single Judge in allowing the two petitions which were filed by the respondents in these appeals, after placing reliance on the judgment of the Division Bench which was rendered in Letters Patent Appeal No. 353/83, as the judgment rendered by the Division Bench in the said appeal has attained finality. The conclusion drawn by the learned Single Judge to the effect that the post of Passenger Guide is a promotional post, is in consonance with the view taken by the Division Bench in Letters Patent Appeal No. 353/83. Therefore, in our view, the learned Single Judge was justified in allowing the petitions which were filed by the original petitioners. No ground is made out by the learned Counsel for the appellants to interfere with the impugned common judgment and, therefore, the appeals are liable to be dismissed.

5. We may state that there is an additional ground for dismissing Letters Patent Appeal No.203/94. Mr. S.M.Shah, learned Counsel for the respondents has stated at the bar that respondent no.4 - Mr. B.S.Agarwal, respondent no.8 - Mr. K.B.Chauhan and respondent no.19 Mr. D.N.Sisodiya have expired prior to 1988. The record of the case further indicates that respondent no.20 as well as respondent no.25 have also expired and notices issued to them in the appeal were returned unserved. The fact that respondents no.4, 8, 19, 20 & 25 have expired is not in dispute. It is also an admitted position that heirs and legal representatives of the respondents who have expired, are not brought on record of the case. In view of the extent and nature of the reliefs granted to the original petitioners by the learned Single Judge, we are of the opinion that the reliefs claimed in Letters Patent Appeal No. 203/94 cannot be granted to the appellants in absence of heirs and legal representatives of the deceased respondents. The appeal will have to be treated as having abated. Thus, Letters Patent Appeal No.203/94 is also liable to be dismissed on the ground that it has abated.

For the foregoing reasons, both the appeals fail and are dismissed, with no order as to costs.

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